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Security Council

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Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

Note verbale dated 22 February 2007 from the Permanent Mission of the Republic of Vanuatu to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Republic of Vanuatu to the United Nations presents its compliments to the Chairman of the Committee and, in accordance with Security Council resolution 1455 (2003), is pleased to submit the first report of the Republic of Vanuatu to the Committee (see annex).

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Annex to the note verbale dated 22 February 2007 from the Permanent Mission of the Republic of Vanuatu to the United Nations addressed to the Chairman of the Committee

Report of the Republic of Vanuatu on actions taken by the Government to implement Security Council Resolution 1455 (2003)

I. Introduction

1. There has been no detected activity by Usama bin Laden, Al Qaeda or the Taleban and their associates in Vanuatu to-date, nor have any specific threats or trends have been identified in this regard.

II. Consolidated list

2. Vanuatu has incorporated, through legislative and operational means, the 1267 Committee's list within its legal system and across all administrative structures, including financial supervision, police, immigration control, customs and consular authorities.

Relevant legislation includes:

The *Counter Terrorism and Transnational Organised Crime Act No. 29 of 2005 (CTTOC)* which commenced effect on 24 February 2006. This Act contains the following offences:

- To carry out, threaten or assist in, or to omit acts to prevent the commission of terrorist acts (punishable by up to 25 years imprisonment and/or a fine of up to VT 125 million);

- To provide or collect any property (including funds) intending, knowing or having reasonable grounds to believe that it will be used to carry out a terrorist act (punishable by up to 25 years imprisonment and/or a fine of up to VT 125 million);

- To knowingly make available property, or other financial or related services to, or for the benefit of a terrorist group makes it an offence (punishable by up to 20 years imprisonment and/or a fine of up to VT 100 million);

- Dealing with terrorist property (imprisonment for up to 20 years and/or a fine of up to VT 100 million);

- Harbouring persons committing terrorist acts (imprisonment for up to 20 years and/or a fine of VT 100 million);

- Providing weapons to terrorist groups (imprisonment for up to 20 years and/or a fine of VT 100 million);

- Recruitment of persons to be members of terrorist groups or to participate in terrorist acts (imprisonment for up to 20 years and/or a fine of VT 100 million);

In addition the Act creates offences implementing a number of United Nations Counter Terrorism Conventions. These include:

- the placement, discharge or detonation of an explosive or lethal device in a public place, building or facility with the intention of causing death, serious bodily injury or damage to property. This offence is punishable by imprisonment for up to 25 years and/or a fine of up to VT 125 million, or both;

- participation in an organised criminal group (punishable by imprisonment of up to 20 years and/or a fine of up to VT 100 million, or both)

- the murder, kidnapping or attack (including threats of such acts) of an internationally protected person (punishable by up to 20 years imprisonment and/or a fine of up to VT 100 million, or both);

- hostage taking (punishable by up to 20 years imprisonment and/or a fine of up to VT 100 million, or both;

- the import, export, or transporting of nuclear material within Vanuatu (punishable by up to 25 years imprisonment and/or a fine of up to VT 125 million);

- hijacking, punishable by up to 20 years imprisonment and/or a fine of up to VT 100 million;

- people smuggling and trafficking, punishable by up to 15 years and/or a fine of up to VT 75 million;

- producing, providing or possessing fraudulent travel documents, punishable by up to 10 years imprisonment and/or a fine of up to VT 50 million.

The Act also contains provisions related to the boarding, search and detention of craft, extraterritorial jurisdiction over certain offences, the exchange of information and imposing requirements on financial institutions to disclose suspicious transactions. Finally, the Act contains mechanisms for the forfeiture and management of suspected terrorist assets.

The *CTTOC* is the principal means by which the government of Vanuatu implements the 1267 Committee's list. The Act provides the Minister of Justice with a power to prescribe, by means of Regulation, any person or entity if (a) the United Nations Security Council has made a decision under Chapter 7 of the Charter of the United Nations relating wholly or partly to terrorism; and (b) the person or entity is identified in the decision, or using a mechanism established under the decision as an entity to which the decision relates.

The Minister of Justice has not yet exercised the power under the CTTOC to prescribe any of the entities or associated persons listed by the United Nations Security Council's 1267 Committee as terrorists for the purposes of Vanuatu's domestic law. However, the offence provisions in the Act (including those related to terrorist financing) will still apply to these terrorist groups. Furthermore, the 1267 Committee's list is distributed to banks and other financial institutions regulated by the Reserve Bank and are also available to institutions and government agencies via publicly available sources on the Internet.

Other legislation relevant to the freezing of terrorist assets includes:

- *The Proceeds of Crime Act No. 13 of 2002* and the *Proceeds of Crime (Amendment) Act No. 30 of 2005;*

- *The Financial Transactions Reporting Act No. 33 of 2000; and Financial Transactions Reporting (Terrorism Amendment) Act No.2 of 2002;*

- *The Mutual Assistance in Criminal Matters Act No. 14 of 2002; and The Mutual Assistance in Criminal Matters Amendment Act No. 31 of 2005*

3. The government of Vanuatu seeks technical assistance to develop procedures for the effective implementation of the legislative mechanisms contained in the CTTOC related to the freezing of terrorist assets and other aspects of Resolution 1455. Refer to 25 below.

4. No designated individuals or entities have been identified within Vanuatu.

5. Vanuatu has nothing to report in this regard.

6. Not applicable.

7. Not applicable.

8. Legislatively, the *CTTOC* established as criminal offences, terrorist financing, harbouring of persons committing terrorist acts, and the recruitment of persons as members of terrorist groups or the participation in terrorist acts. The maximum penalty for the most serious of these offences is imprisonment for up to 25 years and/or heavy financial penalties.

III. Financial and economic asset-freeze

Vanuatu operates an active but reasonably small financial sector. Currently, there are four (4) domestic registered banks, seven (7) international banks, and over 4,000 registered international companies.

9. Sections 6,7 and 8 of the CTTOC contain criminal offences for:

- providing or collecting property, intending, knowing or believing that it will be used to carry out terrorist acts (s6);

- knowingly making available property, financial or related services for *terrorist groups* (s7);

- dealing, collecting, acquiring, possessing, converting, concealing or disguising terrorist property or facilitating transactions involving such property (s8);

The operation of sections 6 and 8 criminalise acts relating to terrorist property generally. Section 7 relates to acts benefiting terrorist groups.

The definition of *"terrorist group"* in section 7 includes groups or persons prescribed as terrorists by the Minister of Justice under section 4 of the Act.

Financial institutions face possible criminal prosecution for these offences if they knowingly transact with terrorists groups (especially those subject to prescription under section 4). These criminal offences, operating in conjunction with suspicious transaction reporting requirements form the basis for Vanuatu's terrorist asset freezing regime. Other related obligations regarding customer identification and record keeping are contained in the Financial Transactions Reporting Act (FTRA).

Currently, the government considers that there are no impediments to the freezing process under Vanuatu's domestic law.

10. The primary legislation empowering authorities to identify, investigate and prosecute activities of entities and associated persons listed by the 1267 Committee is the *CTTOC* and the *Penal Code*. The *CTTOC* contains terrorist specific criminal offences carrying maximum penalties of life imprisonment. In addition, the *Penal Code* contains general criminal offences and related provisions concerning parties, attempts etc. that also apply to criminal acts committed by terrorists or associated persons.

The Vanuatu Police Force (VPF) is Vanuatu's primary law enforcement and security agency. It is responsible for investigating any suspected criminal or terrorist activity within Vanuatu, or liaising with foreign law enforcement or security agencies. Located within the VPF is the Trans-National Crime Unit (TCU) a specialist intelligence unit responsible for intelligence gathering and investigations involving serious organised crime or terrorist activities.

The Public Prosecutor is responsible for the conduct of all criminal prosecutions in Vanuatu and makes decisions related to prosecute independent from the police as investigative agency.

Other agencies contributing to counter-terrorism activities include the Customs Service, the Police, Immigration Service, Quarantine, the Passports Office, the Ministry of Finance, Ports Authorities, Ministry of Foreign Affairs, the State Law Office, and the FIU.

Currently there is no single body with formal responsibility for the coordination of counter-terrorism or security issues at ministerial or senior official level.

However, a Combined Law Agency Group (CLAG) has previously operated. This group included senior officials from the above agencies. A draft Memorandum of Understanding (MOU) related to the possible re-activation of CLAG is currently with Ministers for consideration. If approved, the CLAG may be reconvened as an inter-agency forum for the coordination of policy and operational activities of these agencies. Pending a formal decision from Ministers, officials are considering reconvening informal ad-hoc meetings of this group to ensure ongoing co-ordination of their activities.

In addition, senior officials are currently assessing the desirability of establishing a National Security Council as a high level coordinating body for all security issues affecting government. This group would be comprised of Chief Executives of agencies with interests in security issues and relevant Ministers and would report directly to Cabinet.

At an operational level, a Combined Law Enforcement Intelligence Team (CLEIT) operates between government agencies as a forum for exchanging information or discussion on operational issues. This group generally meets on a quarterly basis unless otherwise required by specific operational events.

The enactment, within recent years, of the CTTOC, Proceeds of Crime Act, the Financial Transactions Reporting Act and Financial Institutions Act means a comprehensive legislative framework now exists for effective control of Vanuatu's financial system to prevent financing of Usama bin Laden, members of Al Qaida, the Taliban, or associated entities or individuals. However, continuing work and assistance is required to enhance the operational mechanisms and capability necessary to fully implement this legislation.

In the area of prevention of terrorist financing, a key element of this is the development of a fully functional FIU with financial investigation and analysis capability. Additional technical assistance and capability building is also required, and being sought, for associated functions in related law enforcement and border security agencies.

11. The *Financial Transactions Reporting Act No. 33 of 2000* (FTRA) is the primary legislative vehicle that imposes requirements on financial institutions relating to the detection and reporting of transactions for Anti-money laundering (AML) and Counter financing of terrorism (CFT) purposes. These include obligations relating to customer due diligence, record keeping, transaction monitoring and suspicious transaction reporting, originator information on wire transfers, and provide for the establishment and enforcement activities of a Financial Intelligence Unit (FIU).

The FTRA has been amended recently to reflect more stringent international standards regarding AML/CFT requirements. The *Financial Transactions Reporting (Terrorism Amendment) Act No. 2 of 2002* imposes a requirement on financial institutions to report transactions suspected of being related to terrorists, and includes within the definition of "terrorist organisation" any terrorists prescribed by the Minister of Justice in Regulations issued under the CTTOC.

The *Financial Transactions Reporting (Amendment) Act No. 28 of 2005* that came into force on 24 February 2006 also contains key elements of Vanuatu's AML/CFT framework. These include:

- The extension of coverage of FTRA requirements to the full range of financial and non-financial institutions required by FATF standards;

- Requirements on institutions to report transactions suspected of being relevant to:

  (a) the detection, investigation or prosecution of a person for a money laundering offence, a financing of terrorism offence or any other serious offence; or

  (b) the commission of a money laundering offence, a financing of terrorism offence or any other serious offence; or

  (c) an act preparatory to a financing of terrorism offence; or

  (d) the enforcement of the FTRA, the *Proceeds of Crime Act No. 13 of 2002* or any other Act prescribed by regulation.

- Requirements on institutions to establish and maintain internal procedures to implement the reporting, customer identification, record keeping and retention requirements under the Act.

- Expressly overriding non-disclosure and secrecy obligations;

- Prohibiting the opening or operation of accounts with false, fictitious or incorrect names;

- Customer identification and verification requirements;

- Obligations to provide originator information on electronic funds transfer;

- Monitor transactions and conduct ongoing Customer Due Diligence (CDD) requirements;

- Requirements to keep and retain records;

- Conferring investigative and enforcement powers on the FIU.

The *International Banking Act 2002* establishes a specific licencing and supervisory framework for the seven (7) international banks operating in Vanuatu. In addition, it imposes physical presence, and record keeping requirements. The Act provides the Reserve Bank of Vanuatu, as regulator for the banking sector and other deposit-takers with monitoring and enforcement powers and creates a number of offences for breaches of the Act.

The *Financial Institutions Act 1999* imposes obligations on domestic financial institutions that are monitored by the Reserve Bank.

The Vanuatu Financial Services Commission (FSC) regulates and supervises the non-bank financial services sector, including trust companies, insurance companies, international companies, charitable organisations, credit unions. Under its empowering legislation, the FSC as supervisory authority has inspection and enforcement powers.

12. To date, no assets of individuals or entities listed in the 1267 list have been located or frozen in Vanuatu.

13. Not applicable. Refer to 12.

14. Refer to 11. While a comprehensive legislative framework is now in place in Vanuatu for AML/CFT purposes this needs to be linked to the ongoing development of the operational capability necessary to supervise, monitor and investigate transactions within Vanuatu's financial system.

IV. Travel bans

15. The primary legislative mechanisms implementing the travel ban are contained in the *Immigration Act 1988*. The Act provides for prohibitions on entry or removal of persons considered to be undesirable immigrants, together with related offences.

Section 15 of the Act confers broad powers on the Minister of Immigration to declare persons, or classes or persons to be undesirable immigrants for the purposes of the Act. The Minister may declare any person to be an undesirable immigrant, prior to their entry into Vanuatu or within 2 years thereafter, if based on information received from any government through official or diplomatic channels, or from any other source deemed by the Minister in his discretion to be reliable, he considers them to be an undesirable immigrant;

In addition, the Minister may declare any person who is a member of any class or group of persons declared by the Minister to be a prohibited class for the purposes of Section 15 to be an undesirable immigrant. Under the Act such persons are deemed to be prohibited immigrants are not entitled to enter or remain in the country.

The powers under Section 15 could be relied upon to deny entry to persons into Vanuatu who the government considered to be a potential security threat. While the Minister has not yet exercised this power in respect of persons listed on the 1267 Committee's list this is an administrative step that could be undertaken urgently should this be required.

Under the Act all persons, except EU and Commonwealth nationals who are non-citizens of Vanuatu require a visa to enter the country. All visas are issued in Vanuatu by the Immigration Department. Consular offices do not carry out this function.

Visas are valid for an initial period of 30 days and may be extended for a further maximum period of 30 days. Non-citizens wishing to remain in Vanuatu beyond this period must apply for residency. Persons residing in Vanuatu for 10 years or more are entitled to apply for a passport issued by the government of Vanuatu but are not permitted to hold dual citizenship. These passports are valid for a period of 5 years with a right of renewal for a further 5 years. Applications by non-nationals for visas, residency or citizenship are subject to *"risk-based"* security checks conducted by immigration officials and police. A liaison officer from the TCU is located within the Department of Immigration. Background/security checks on applicants are conducted by the TCU utilising local intelligence sources and those available through the PTCCC and AFP channels.

The *Passports Act 1980* controls the issuance of Vanuatu's passports. Under the Act only citizens of Vanuatu are eligible to be issued with, and hold, a passport issued by the government of Vanuatu.

Under the Act it is an offence, punishable by imprisonment for up to 5 years and/or a fine of VT 100,000 to make any false statement for the obtaining of a passport, certificate of identity or travel document; or any false statement or representation to the Principal Passport Officer, to knowingly and unlawfully make any alteration, addition, deletion or endorsement in any passport, certificate of identity or travel document; or in any other manner contravene the Act.

16. Currently, border authorities operate a largely manual based system for verifying the identity of persons who may be individuals listed on the 1267 or *CTTOC* lists or otherwise present a security risk.

Persons seeking entry into Vanuatu may also be screened using systems available through regional intelligence channels, such as the Pacific Trans National Crime Co-ordination Centre (PTCCC) based in Suva, Fiji and AFP in Australia. Vanuatu is a member of the PTCCC and authorities exchange relevant intelligence information. Vanuatu's police, but in particular the TCU has close relationships with law enforcement agencies in neighbouring countries and, where appropriate, will exchange intelligence information directly with them.

There is no provision for electronic Advanced Passenger Identification (API) of persons who travel to Vanuatu. However, under the *Immigration Act* it is a requirement on all airlines or shipping operators to provide manifests of all passengers being carried to Vanuatu. In practice, these lists are faxed or e-mailed to immigration authorities in Vanuatu prior to the arrival of aircraft or ships. These lists are available to all border security agencies.

No problems with the current process for checking the 1267 Committee's list have been identified; however officials are considering options for enhancing the accessibility and timeliness of the system for all relevant agencies.

17. Refer to 16 above. There is no current capability for authorities to search list data by electronic means at all entry points. However, the TCU has access to PTCCC and AFP channels in Australia that have access to a wide range of international watch-lists.

18. No listed individuals have been identified and stopped at Vanuatu's border or in transit.

19. All visas are issued through the Immigration Service in Vanuatu. The TCU conducts risk-based security checks on applicants using channels available through the Australian Federal Police in Australia and the PTCCC that would include the identification of persons appearing on the 1267 Committee's list.

V. Arms embargo

20. The government of Vanuatu considers there to be a low risk of weapons, ammunition or associated technology being developed, manufactured or acquired by terrorist groups within Vanuatu. However, its authorities continue to monitor and regularly review this risk and apply resources and priority proportionate to the level of ongoing risk.

The *Firearms Act No. 7 of 1987* regulates the possession, importation or dealing of firearms and ammunition within Vanuatu.

Persons wishing to possess or use firearms or ammunition are required to obtain a licence from the Commissioner of Police under Section 3 of the Act.

Persons wishing to carry on any trade or business involving the manufacture, sale, transfer, repair, testing or proof of firearms or ammunition must hold a firearms dealer's licence issued by the Commissioner of Police under Section 6 of the Act.

Section 7 of the Act provides that no person shall import into Vanuatu, any firearms or ammunition without having first obtained a firearms import licence issued by the Commissioner of Police.

Under the Act (s18) the Minister of Police may prohibit the importation into Vanuatu of any firearms or ammunition or parts of firearms or ammunition or of particular kinds, or parts of firearms or ammunition without a special licence issued by the Commissioner of Police.

Under this provision the Minister has prohibited the importation of semi-automatic or similar weapons and related ammunition or parts without such a special licence from the Commissioner of Police.

All applications for licences under the Act (irrespective of type) are considered by the Commissioner after applicants are assessed by a specialist vetting unit within Police. This unit conducts security risk assessments that include checks on the criminal histories of applicants.

In addition to imposing regulatory controls on firearms and ammunition the Act contains a number of criminal offences. The most serious of these carry penalties of up to 15 years imprisonment or fines of up to VT 750,000. The Act also provides police with powers to search premises or vehicles for firearms or ammunition suspected of being relevant to offences and to detain those items. (Sections 33-36)

The criminal offence in the CTTOC (S10) of supplying weapons to terrorists, (carrying a maximum penalty of 20 years imprisonment and/or a fine of VT 100 million) would specifically apply to any person who provides, or offers to provide weapons (defined as including firearms, chemical, biological or nuclear weapons) to terrorists.

The Act (s8) contains an express prohibition, except under special licence from the Commissioner of Police the manufacture, sale, transfer, acquisition or possession of automatic or semi-automatic weapons or those that discharge noxious liquids or gases.

The *Explosives Act 1988* makes it an offence, unless permitted under licence issued by the Commissioner of Police, to import explosives into Vanuatu. The maximum penalty for the offence is in the case of a first offence, to a fine not exceeding VT50,000 or to imprisonment for a term not exceeding 6 months or to both. For second or subsequent offences the maximum penalty is double such penalties.

21-23. Refer to 20 above.

VI. Assistance and conclusion

24. Not applicable.

25. Vanuatu requires substantial operational Technical assistance across a broad range of law enforcement and border security activities. These include:

- Capability building related to the continuing development and maintenance of a fully functional Financial Intelligence Unit, including the provision of IT systems and/ technical expertise;
- Education and awareness programs on AML/CFT obligations for financial institutions considering business in Vanuatu;
- Training and capability building, including IT for Customs, Police (including TCU) and Immigration agencies;
- Any technical assistance that will assist all of the government agencies with responsibility for border control to identify and manage critical performance variables and diagnostic control systems to implement the sanction regime;

26. Not applicable